

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO.3205 OF 2005

Rosmarine Shipping Pvt. Ltd. ..Petitioner.
Vs.
Kaushal Salvi and anr. ..Respondents.

Mr.Y.E. Tavaria for the Petitioner.
Mr.G. Sharma for the Respondent No.1.

**CORAM : R.S. MOHITE, J.
DATED : 03/3/2006.**

P.C.

1. Heard both sides.

2. Rule. By consent, rule made returnable forthwith.

3. This petition impugns an order dated 23.12.2005 passed by the Metropolitan Magistrate, 26th Court, Borivali allowing the Application No.627/2007 filed by Respondent No.1 for withdrawing an amount of Rs.6,86,859/- and rejecting Application No.793/2005 filed by the petitioner for withdrawal of the said amount. Criminal Case No.66/2005 has been registered on the basis of the police report for an alleged offence under Section 420 of the I.P.C. In the course of the investigation by the police, the

respondent No.1 had made an application for anticipatory bail in the Sessions Court. When the matter was pending in the Sessions Court, an application came to be filed on behalf of the respondent No.1 indicating his willingness to deposit an amount of Rs.6,86,859/-. However, the amount was not deposited and therefore, anticipatory bail application came to be dismissed. The respondent No.1 then filed anticipatory bail application in the High Court and during the pendency of this anticipatory bail application amount of Rs.6,86,859/- came to be deposited in the High Court. On such deposit being made by an order dated 6.7.2005, this court (A.S.OKA, J.) recorded that the amount of Rs.6,86,859/- had been deposited in this court by the respondent No.1 on 30.6.2005. Considering that the amount has been deposited, the court concluded that this was no longer a case where custodial interrogation of the applicant is required. This court then granted anticipatory bail on the terms mentioned in the order and directed that the amount which has been deposited by the respondent No.1 be transferred to the Court of Metropolitan Magistrate, 26th Court at Borivali, Mumbai and if any application is made by the complainant in respect of the said amount, the learned Magistrate will not pass any

order on the said application without hearing the applicant-present respondent No.1. Accordingly amount was transferred to the trial court. In the Trial Court, the present petitioner made an application for return of the amount. The present respondent No.1 however, also made separate application for return of the amount. He contended that he had made payment to a third party RTG Logistics. This payment is said to have been made by him on 16.12.2004. It may be stated that in his application before the Magistrate, he made an incorrect averment to the effect that the entire amount of Rs.6,86,859/- had been paid to RTC Logistic. The cheque no. and the date of the payment to RTC Logistic were not disclosed in the said application. It was the case of the present petitioner that RTG Logistic was run by one S.K. Liladhar who is an ex employee of the respondent No.2 and the respondent No.2 had published a notice to trade in the Exim India Newsletter dated 9.11.2004 to the effect that the said person was no longer in the service of the petitioner company and the company will not be responsible for his acts and the acts of certain other persons mentioned in the said complaint. By the impugned judgment and order, the trial court dismissed the petitioner's application

for return of the amount and allowed the respondent No.1 on the footing that the payment has been made to RTG Logistic. The court also recorded the specific finding that it may be possible that the respondent No.1 may not have read the notice given by the present petitioner. While passing the said order the court had nowhere noticed that the payment made to RTG Logistic was not of the amount which was deposited in the court. The question as to whether the repayment made to RTG Logistic was in respect of the repayment of the dues to the petitioner or was in respect of some other independent transaction was in fact the matter of investigation. That investigation was avoided obtaining anticipatory bail by depositing the amount in question. In such circumstances, the trial court would have applied its mind as to whether the amount said to have been made to RTG Logistic on 16.12.2004 was in lieu of the dues payable to the petitioner company. I find no such finding in the impugned judgment and order. In the circumstances, the impugned judgment and order is quashed and set aside.

4. The respondent No.1 is directed to redeposit an amount of Rs.6,86,859/- in the trial court within a period of four weeks from today. On such deposit

being made, an amount of Rs.6,18,606/- which according to him is due from respondent No.1 and which was paid to RTG Logistic by cheque No.836937, in respect of which debit was made to Nutracare International which according to the respondent No.1 is a proprietary firm, shall be invested by the court in fixed deposit in nationalised bank initially for the period of three years. If the deposit is not made within the aforesaid period liberty to the petitioner to file application for cancellation of anticipatory bail and to take such further steps as petitioner is entitled to take according to law. The balance amount of Rs.68,253/- will be liable to be returned by the court to the petitioner subject to petitioner giving an indemnity bond for the said amount and furnishing an undertaking before the trial court to the effect that petitioner will return the said amount as and when called to do so. Rule is made absolute in the aforesaid terms.

(R. S. MOHITE, J.)